86-297

FILED
MAR 17 1987
JOSEPH F. SPANIOL, JR
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

NO.

RICHARD RUSSELL PETITIONER - APPELLANT

vs.

STATE OF TEXAS - RESPONDENT - APPELLEE

CASE NO. 83-CR-0827

APPENDIX

FOR

PETITION FOR A WRIT OF CERTIORARI

TO THE TEXAS COURT OF CRIMINAL APPEALS

RICHARD RUSSELL
PRO-SE
16106 N.W. MILITARY HWY.
SAN ANTONIO, TEXAS 78231

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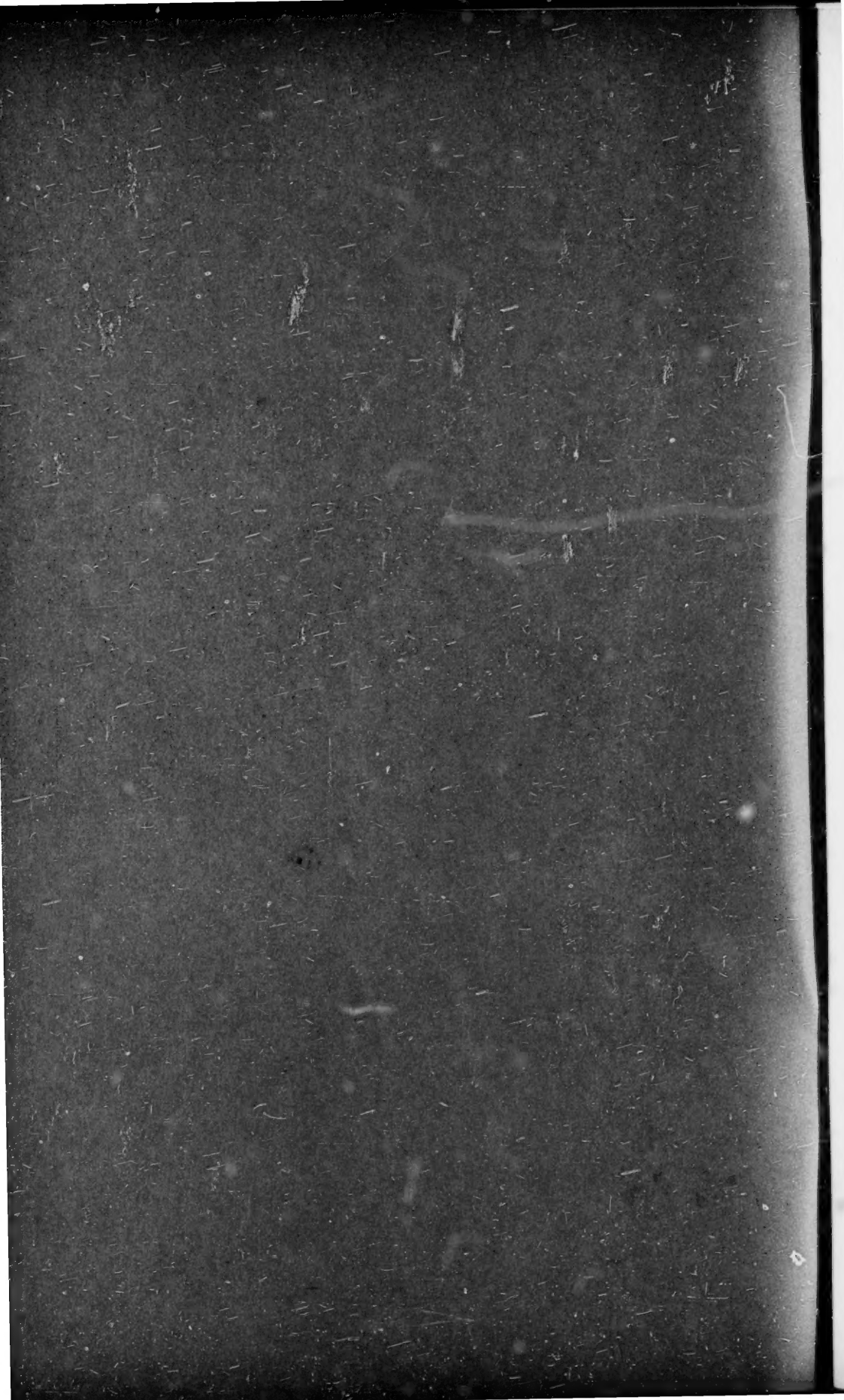

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SAN ANTONIO, TEXAS 78231

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OFFICIAL NOTICE
COURT OF CRIMINAL APPEALS

RE: Writ No. 15,540-01
STYLE: Richard Russell
TRIAL COURT NO: 85-W-0417;

January 15, 1986

This is to advise that the Court has denied without written order the application for writ of habeas corpus.

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

MAIL TO:

Richard Russell
16106 N. W. Military
San Antonio, TX 78231

OFFICIAL NOTICE
COURT OF CRIMINAL APPEALS

RE: Case No. 0255-85
STYLE: Russell, Richard

January 15, 1986

On this day the Appellant's Motion for Rehearing was denied. JUDGE WHITE NOT PARTICIPATING.

COA#: 04-83-00499-CR

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

MAIL TO:

Edward Camara
Attorney at law
126 Main Plaza,
Suite One
San Antonio, TX 78205

ILABLE COPY

Appendix A

Copies of Opinions

OFFICIAL NOTICE
COURT OF CRIMINAL APPEALS
150 Years of Independence
1836-1986

RE: Case No. [redacted]85
STYLE: Russell [redacted]ard

January 31, 1986

On this day the Appellant's Pro Se Motion to Stay Mandate has been Denied

COA#: 04-83-00499-CR

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

MAIL TO:

Richard Russell
16106 N.W. Military Hwy.
San Antonio, TX 78231

OFFICIAL NOTICE
COURT OF CRIMINAL APPEALS
150 Years of Independence
1836-1986

RE: Writ [redacted],540-02
STYLE: [redacted] Russell
TRIAL COURT NO: 86-W-0041;

February 18, 1986

I have this day received and presented to the Court the application for writ of habeas corpus.

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

MAIL TO:

Richard Russell
16106 N. W. Military
San Antonio, TX 78231

BEST AVAILA

Appendix A

Copies of Opinions

OFFICIAL NOTICE
COURT OF CRIMINAL APPEALS
150 Years of Independence
1836-1986
RE: Writ No. [redacted] 540-02
STYLE: R[redacted]ussell
TRIAL COURT NO: 86-CR-0041

March 26, 1986

This is to advise that the Court has denied without written order the application for writ of habeas corpus.

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

MAIL TO: Richard Russell
16106 N. W. Military
San Antonio, TX 78231

OFFICIAL NOTICE
COURT OF CRIMINAL APPEALS
OFFICIAL BUSINESS
STATE OF TEXAS
PENALTY FOR PRIVATE USE
RE: Case No. 0256-85
STYLE: Russell

April 19, 1985

I have this day received and filed the Appellant's petition for discretionary review.

COA#: 04-83-00499-CR

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

MAIL TO: Richard Russell
16106 N.W. Military Hwy.
San Antonio, TX 78231

ABLE COPY

APPENDIX B

NO. 0256-85

IN THE COURT OF CRIMINAL APPEALS

OF TEXAS

RICHARD RUSSELL

Appellant

VS.

STATE OF TEXAS,

Appellee

APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

FROM THE

FOURTH SUPREME JUDICIAL DISTRICT OF TEXAS

AT SAN ANTONIO

EDWARD CAMARA, JR.
126 Main Plaza, Suite 1
San Antonio, Texas 78205
(512) 223-5893

ATTORNEY FOR APPELLANT
Texas Bar Card No. 03674570

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Now comes the appellant herein, RICHARD RUSSELL, by and through his undersigned attorney, and respectfully urges the Court to grant review of this cause and offers the following in support thereof, to wit:

STATEMENT OF THE CASE

Appellant was charged by bill of indictment with the felony offense of aggravated promotion of prostitution [R.I-2]. On May 18, 1983 Appellant pleaded nolo contendere and applied for deferred adjudication [R.I.-21]. On June 16, 1983 the trial court placed Appellant on probation, without entering an adjudication of guilt, for a term of six (6) years, and imposed a Five Thousand ($5,000.00) Dollar fine, conditioned that Appellant comply with some 16 conditions of probation [R.I-7]. Subsequently the State filed a "Motion to Enter Adjudication of Guilt and Revoke Probation," alleging violations of condition 16 in three (3) paragraphs [R.I-10]. Appellant pleaded not true to each allegation, but after hearing evidence, the Court found said allegations true, entered an adjudication of guilt, and sentenced Appellant to six (6) years imprisonment in the Texas Department of Corrections [R.II-115-118]. Timely notice of appeal was given in open court [R.II.-118], and appeal was perfected to the Fourth court of Appeals sitting at San Antonio.

STATEMENT OF THE PROCEDURAL HISTORY

A panel of the Fourth Court of Appeals delivered a published opinion in this cause on January 30, 1985, overruling appellant's seven grounds of error and affirming the judgment of the trial court. No motion for rehearing was filed in the Court of Appeals.

REASONS FOR REVIEW

Review is proper pursuant to Tex. Cr. App. R. 302 (c) (2) because the Court of Appeals has decided an important question of state and federal law which has not been, but should be, resolved by the Court of Criminal Appeals. There is conflict and confusion in the applicable case law and there is a need for this Court to review Appellant's probation and revocation contention in harmony with "considerations of procedural and substantive fairness." **Bearden v. Georgia,** 461 U.S.____; 103 S.Ct. 2064; 76 L. Ed. 2d 221, 228 n.7 (1983) [a deferred adjudication probation case]; **Douglas v. Buder,** 412 U.S. 430; 93 s. Ct. 2199; 37 L.Ed. 2d 52 (1973); **Gagnon v. Scarpelli,** 411 U.S. 778, 786; 93 s.Ct. 1756; 36 L.Ed. 2d 656,664 (1973). The question is whether an appeal of deferred adjudication with due process issues is not reviewable; or whether the trial court's decision to revoke probation after final adjudication and determination of punishment was not a denial of constitutional due process. Alternatively, review is proper pursuant to Tex. Cr. App. R. 302 (c) (3) because the Court of

Appeals has decided an important question of state and federal law in conflict with applicable decisions of the Court of Criminal Appeals.

FIRST GROUND FOR REVIEW

WHETHER THE COURT OF APPEALS CORRECTLY HELD THAT THE TRIAL COURT'S DECISION TO REVOKE PROBATION AFTER FINAL ADJUDICATION AND DETERMINATION OF PUNISHMENT WAS NOT A DENIAL OF DUE PROCESS AND DUE COURSE OF LAW UNDER THE TEXAS AND UNITED STATES CONSTITUTION.

ARGUMENT AND AUTHORITIES

There are due process issues that apply to probation and probation revocation that can not constitutionally be circumvented by cases holding "the trial court's decision to proceed with an adjudication of guilt is one of absolute discretion and not reviewable." [**See e.g. Williams v. State,** 592 S.W. 2d 931, 932 (Tex. Crim. App. 1979)].

SECOND GROUND FOR REVIEW

WHETHER THE COURT OF APPEALS CORRECTLY HELD THAT THE TRIAL COURT DID NOT VIOLATE DUE PROCESS AND DUE COURSE OF LAW BY NOT MAKING WRITTEN FINDINGS OF FACT IN SUPPORT OF ITS PROBATION REVOCATION ORDER.

ARGUMENT AND AUTHORITIES

Appellant maintains the trial court violated due process and due course of law by not making written findings in support of its order revoking probation. "[M]inimum requirements of due process" include the right of Appellant to a "written statement by the factfinders as to the evidence relied on and reasons for revoking probation. . .". **Gagnon v. Scarpelli,** 411 U.S. 778, 786 (1973); **accord, United States v. Martinez,** 650 F. 2d 744 745 (5th Cir. 1981); **Ruedas v. State,** 586 S.W. 2d 520, 523 (Tex. Crim. App. 1979).

THIRD GROUND FOR REVIEW

WHETHER THE COURT OF APPEALS CORRECTLY HELD THAT THE TRIAL COURT HAD SUFFICIENT EVIDENCE TO SUPPORT A REVOCATION OF APPELLANT'S PROBATION.

ARGUMENT AND AUTHORITIES

Appellant further argues the trial court erred in revoking probation in that the evidence was insufficient to prove by a preponderance of the evidence that he violated condition 16 of his probation. The bulk of the state's evidence came from a former employee of appellant; and much of the testimony was hearsay, which had no probative force because it was objected to properly. The Supreme Court found a substantive violation of due process when a state court revoked probation on a record "totally devoid of evidentiary support."

Douglas v. Buder, supra; 37 L.Ed. 2d at 54.

FOURTH GROUND FOR REVIEW

WHETHER THE COURT OF APPEALS CORRECTLY HELD THAT PROBATION CONDITION 16 OF APPELLANT'S PROBATION TERMS WAS NOT INVALID UNDER THE STATUTES AND CONSTITUTION OF TEXAS AND THE UNITED STATES CONSTITUTION.

ARGUMENT AND AUTHORITIES

Appellant complains that probation condition 16 is constitutionally invalid because of several reasons. The condition is not provided for by statute. Article 42.12 §6 of the Texas Code of Criminal Procedure does not provide for such a condition, thus the trial court went beyond its judicial authority. The condition is vague and indefinite, such that it does not inform the probationer with sufficient certainty of what he is to do will not provide a basis for revocation. **E.g. Curtis v. State,** 548 S.W. 2d 57,58 (Tex. Crim. App. 1979); **Tamez v. State,** 534 S.W. 2d 686, 689 (Tex. Crim. App. 1976); **Williams v. State,** 523 S.W. 2d 953, 954 (Tex. Crim. App. 1975). The condition has no reasonable relationship to the treatment of the accused and the protection of the public. The Texas Court of Criminal Appeals has held that, to be valid, a condition of probation must "have a reasonable relationship to the treatment of the accused and the protection of the public."

Tamez v. State, 534 S.W. 2d 686,691 (Tex. Crim. App. 1976), **accord, Hernandez v. State,** 556 S.W. 2d 337, 343 (Tex. Crim. App. 1977). The Court of Appeals has recognized that "due process considerations. . . require. . . a factual basis" for certain probation conditions. **Cartwright v. State,** 605 S.W. 2d 287, 289 (Tex. Crim. App. 1980), and in **Ex parte Shillings,** 641 S.W. 2d 538, 540 (Tex. Crim. App. 1982) ordered a statutorily inapplicable and "unreasonable" condition of deferred adjudication probation deleted from the trial court's orders.

FIFTH GROUND FOR REVIEW

WHETHER THE COURT OF APPEALS CORRECTLY HELD THAT THE TRIAL COURT DID NOT VIOLATE DUE PROCESS AND DUE COURSE OF LAW BY NOT HALTING THE REVOCATION PROCEEDINGS SUA SPONTE AND CONDUCTING A COMPETENCY EXAMINATION WHEN EVIDENCE OF APPELLANT'S INCOMPETENCY WAS INTRODUCED.

ARGUMENT AND AUTHORITIES

Appellant contends the trial court violated due process and due course of law when it failed to inquire sua sponte into the issue of appellant's incompetency once that issue was raised.

Due process requirements are immediately invoked whenever an issue of an accused's competency is raised.

The trial court has an affirmative duty to conduct a hearing to

determine competency (**see Drope v. Missouri,** 420 U.S. 162 (1975); **Pate v. Robinson,** 383 U.S. 375 (1966); **Bishop v. U.S.,** 350 U.S. 961 (1956) [revocation proceeding]). Appellant complains that the trial court erred in not halting the revocation proceeding and conducting a competency examination when appellant's attorney testified that he had some reservations about appellant's mental competence. **See Carpenter v. State,** 507 S.W. 2d 794, 795 (Tex. Crim. App. 1974), **accord Pate v. Robinson,** supra at 385.

CONCLUSION AND PRAYER

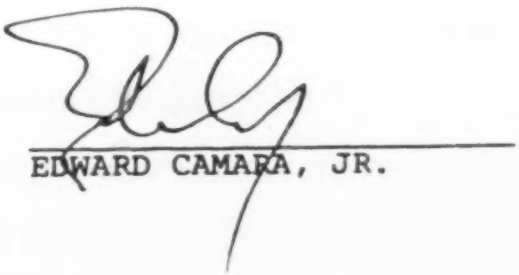
WHEREFORE, PREMISES CONSIDERED, Appellant respectfully prays this Court to grant this Petition for Discretionary Review from the opinion of the Fourth Court of Appeals.

Respectfully submitted,

EDWARD CAMARA, JR.
126 Main Plaza, Suite 1
San Antonio, Texas 78205
(512) 223-5893
ATTORNEY FOR APPELLANT
Texas Bar Card No. 03674570

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Petition for Discretionary Review has been hand delivered to the District Attorney's Office, Bexar County Courthouse, San Antonio, Texas and a copy has been sent by U.S. mail to the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711, on this 17 day of April, 1985.



EDWARD CAMARA, JR.

APPENDIX C
OPINION ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

RICHARD RUSSELL, Appellant		**Petition for Discretionary Review from the Court of Appeals, Fourth Supreme Judicial District of Texas (BEXAR COUNTY)**
NO. 0256-85	**v.**	
THE STATE OF TEXAS, Appellee		

OPINION ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

Appeal is taken from an order revoking probation. On May 18, 1983, appellant entered a plea of nolo contendere to the offense of aggravated promotion of prostitution. After hering the evidence and finding that it substantiated appellant's guilt, the court deferred further proceedings without entering an adjudication of guilt and placed appellant on probation for a period of 6 years. On October 20, 1983, the trial court revoked appellant's probation and entered an adjudication of guilt after finding that appellant had violated the conditons of his probation. Punishment was assessed at six yers and a $5,000.00 fine.

Appellant appealed from the hearing in which the trial court revoked his probation and entered an adjudication of guilt. The Court of Appeals affirmed the judgment of the trial court. Russell v. State, ____ S.W.2d ____ (Tex. App. - San Antonio, 1985).

In his petition for discretionary review, appellant raises a number

of grounds for review concerning the revocation of his probation and entry of an adjudication of guilt. As noted by the Court of Appeals, no appeal may be taken from the hearing in which the trial court determines to proceed with an adjudication of guilt on the original charge. Daniels v. State, 615 S.W.2d 771 (Tex. Cr. App. 1981); Wright v. State, 592 S.W.2d 604 (Tex.Cr.App. 1980). Under such circumstances, there was no need for the Court of Appeals to address the grounds of error presented by appellant with respect to the revocation hearing.

Appellant's petition for discretionary review is refused and the judgment of the Court of Appeals is affirmed.

PER CURIAM

En banc

Publish

Delivered: October 16, 1985
T. Davis & White, JJ., not participating

TO THE 175TH DISTRICT COURT OF BEXAR COUNTY,

GREETING:

Before our Court of Appeals for the Fourth Supreme Judicial District of Texas, on the 30th day of Januaary A.D. 1985, the cause upon appeal to revise or reverse your judgment between

Russell, Richard

No. 04-83-00499-CR and Tr. Ct. Case No. 83-CR-0827

The State of Texas

was determined; and therein our said Court made its order in these words:

After hearing this cause and examining the record, the Court finds that the court below committed no reversible error. It is therefore ORDERED that the judgment be AFFIRMED, and this decision be certified to the trial court.

WHEREFORE, WE COMMAND YOU to observe the order of our said Court of Appeals for the Fourth Supreme Judicial District of Texas, in this behalf, and in all things have it duly recognized, obeyed and executed.

WITNESS, the HON. Carlos C. Cadena, Chief Justice of or Court of Appeals, with the Seal thereof affixed, at the City of San Antonio, this the 24th day of February, A.D. 1986

Herb Schaefer, Clerk

Cynthia A. Martinez

Cynthia A. Martinez, Deputy

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FILED
DAVID J. GARCIA
DISTRICT CLERK
BEXAR CO.,TEXAS
1986 FEB 25 AM 10 53
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APPENDIX D

NO. 0256-85

IN THE COURT OF CRIMINAL APPEALS

OF TEXAS

RICHARD RUSSELL

Appellant

VS.

STATE OF TEXAS,

Appellee

APPELLANT'S MOTION FOR REHEARING ON PETITION FOR DISCRETIONARY REVIEW

FROM THE

FOURTH SUPREME JUDICIAL DISTRICT OF TEXAS

AT SAN ANTONIO

EDWARD CAMARA, JR.
126 Main Plaza, Suite 1
San Antonio, Texas 78205
(512) 223-5893

ATTORNEY FOR APPELLANT
Texas Bar Card No. 03674570

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No. 0256-85

RICHARD RUSSELL	**§**	**IN THE COURT OF**
VS.	**§**	**CRIMINAL APPEALS OF**
THE STATE OF TEXAS	**§**	**THE STATE OF TEXAS**

APPELLANT'S MOTION FOR REHEARING ON PETITION FOR DISCRETIONARY REVIEW

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Now comes the Appellant herein, RICHARD RUSSELL, by and through his undersigned counsel, and pursuant to Tex. CR. App. R. 309, files this, his Motion for rehearing. In support hereof, Appellant specifies and relies upon the following ground, to wit:

This Honorable Court of Criminal Appeals erred in refusing Appellant's Petition for Discretionary Review in an opinion delivered on October 16, 1986.

ARGUMENT AND AUTHORITIES

Appellant contends that the Court's opinion is erroneous in holding that the Court of Appeals needed not to address the grounds of error presented by Appellant with respect to the revocation hearing. Although Art. 42.12, Sec. 3d, V.A.T.C.C.P. provides that no appeal may be taken from the trial court's determination to preceed with an adjudication of guilt on the original charge, that statutuory

prohibition only relates to the **"determination to proceed"** not the actual adjudication proceeding itself. Art. 42.12, Sec. 3d(b), V.A.T.C.C.P.

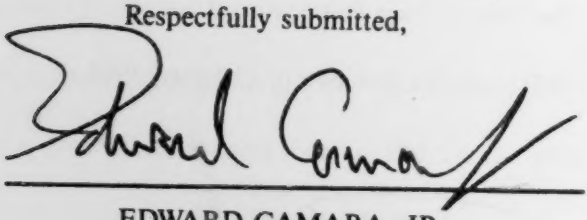
Once the determination to proceed with an adjudication of guilt is made all further proceedings **including assessment of punishment, pronouncement of sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.** Art. 42.12, Sec. 3d(b), V.A.T.C.C.P.

The Trial Court's basis upon which guilt is adjudicated is, therefore, subject to review as is any other finding of guilt by a Trial Court. **Daniels v. State,** 615 S.S. 2d 771 (Tex. Crim. app. 1981). An order adjudicating a defendant's guilt must be supported by the rules of law that would support any other finding of guilt. The requirement of due process and due course of law must be followed to prevent arbitrary or capricious adjudications of guilt after invoking the provisions of the deferred adjudication statute. **Daniels v. State,** 615 S.W. 2d 771, 774, dissent (Tex. Crim. App. 1981).

WHEREFORE, PREMISES CONSIDERED, Appellant prays this Honorable Court to grant this Motion for Rehearing, and thereupon to withdraw this Court's opinion delivered on October 16, 1985, and to grant Appellant's Petition for Discretionary Review and review the

decision of the Fourth Court of Appeals which affirmed Appellant's conviction.

Respectfully submitted,

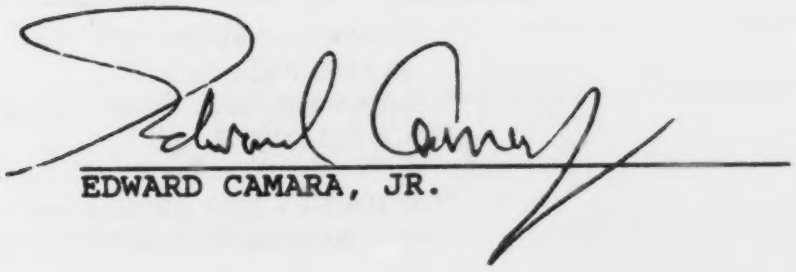


EDWARD CAMARA, JR.
126 Main Plaza, Suite 1
San Antonio, Texas 78205
(512) 223-5893

ATTORNEY FOR APPELLANT
Texas Bar Card No. 03674570

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Appellant's Motion for Rehearing was mailed by certified Mail, Return Receipt Requested, to the Bexar County District Attorney, Bexar County Courthouse, San Antonio, Texas 78205, and the State of Texas Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711 on this 31st day of October, 1985.



EDWARD CAMARA, JR.

APPENDIX E
PETITIONER'S 1ST AMENDED PETITION
FOR WRIT OF HABEAS CORPUS

The State of Texas	**In the 175th Court**
vs	**of**
Richard Russell	**Bexar County, Texas**

Petitioner's 1st Amended Petition for Writ of Habeas Corpus Pursuant to Art. 11.07 of T.C.C.P. and 28 U.S.C. 2241 thru 2254.

Petitioner, Richard Russell moves in this court to take leave to amend his original petition for Writ of Habeas Corpus and file the same. Petitioner's will show the court the following grounds.

I Denial of Procedural Due Process and Equal Protection of Laws.

Petitioner alleged in his original petition that the systematic exclusion of negroes from the March term of 1983 Grand Jury, as well as, the preclusion of negroes from serving as foremen of the Grand Jury's past violated his rights under Equal Protection of Laws.

Petitioner would amend and expand his allegations to include the fact that the systematic preclusion and denial of negroes from serving in the capacity of Foreman of the Grand Jury is discriminatory. Selection of members of a Grand Jury or Foreman of the Grand Jury because they are of one race and not another destroys the appearance

of Justice and thereby casts doubt on the integrity of the Judicial Process. The exclusion from Grand Jury service of negroes, or any group otherwise qualified to serve, impairs the confidence of the public in the administration of justice. As the Court repeatedly has emphasized, such discrimination "Not only violates our constituion and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government." **Smith v. Texas,** 311 U.S. 128, 130, 61 S. Ct. 164, 165, 85 L. td. 84 (1940). The court in **Hill v Texas,** 316 U.S. at 406, 62 S. Ct. at 1162 Stated . . .

> "No state is at liberty to impose upon one charged with crime a discrimination in its trail procedure which the constitution, and an act of Congress passed pursuant to the Constitution, alike forbid. Nor is this Court at liberty to grant or withhold the benefits of equal protection which the Constitution command for all, merely as we may deem the defendant innocent or guilty." **Tumey V Ohio** 273 U.S. 510, 535.

Petitioner argued that he was entitled to have his case screened by a Grand Jury Venire from which no segment of the community has been improperly excluded. The petitioner was not entitled to a negro or woman foreman, he was entitled to at least the possibility of having a woman or negro foreman. That possibility was nullified by the purposeful discrimination that presumably occurred in this case. See **Peters V Kniff,** 407 U.S. 493 (1972). In Peters, where the issue arose in

the content of deciding whether to allow a white person to challenge discriminatory practices excluding negroes, the plurality stated that the consequences of incertainty should fall upon the prosecution. The plurality therefore concluded that "(i)n light of the great potential for harm latent in an unconstitutional jury-selection system, and the strong interest of the criminal defendant in avoiding that harm, any doubt should be resolved in favor of giving the opportunity for challenging the jury to too many defendants, rather than giving it too few." Ibid. Likewise, in light of the potential for harm latent in the unconstitutional selection of a Grand Jury Foreman by a District Court Judge, and a defendant's (and society's) strong interest in avoiding that harm, any doubt should be resolved in favor of applying standards that are too stringent rather than too lax.

Petitioner alleges that from 1982 to 1985 negroes and women were systematically excluded from serving in the capacity of foreman of the Grand Jury. And perhaps longer than 3 years. This systematic exclusion "Casts doubt upon the integrity of the whole judicial process."

II FATALLY DEFECTIVE INDICTMENT

Petitioner argues that his indictment for the offense of aggravated promotion of prostitution filed March 30, 1983 is fatally defective because the foreman of the Grand Jury did not endorse his signature to the indictment against the petitioner. See attached copy. In **Hobby V. United States,** ____ U.S. ____ , (July 2, 1984) the Supreme Court in discussing the difference in a State Grand Jury foreman role and that of a Federal Grand Jury foreman noted the following:

> "The Tennessee foreman had the following duties: He or she is charged with the duty of assisting the District Attorney in investigating crime. May order the issuance of subpoenas for witnesses before the Grand Jury. May administer oaths to Grand Jury by witnesses, **Must endorse every bill returned by the Grand Jury,** and must present any indictment to the court in the presence of the Grand Jury... The absence of the Foreman's endorsement "makes an indictment" Fatally Defective." **Bird V. State,** 103 Tenn. 343, 52 S.W. 1076 (1899)." **Rose V. Mitchell, Supra,** at 548, N. 2..."

Petitioner's copy of said indictment is clearly shown not endorsed... Whereas, if the state's copy is signed then there is the obvious question of when was the signatures affixed to the indicted? Procedures has it that the petitioner must be served a true and correct copy of said indictment.

Lastly, this petitioner was given an appeal bond, to appeal his deferred adjudication case, but the Texas Court of Criminal Appeals, refuses to let this petitioner appeal this case, taking away this petitioner's due process, due course of law, and equal protection under the law, and all rights under the United States Constitution to be heard.

Under these circumstances this must be classified as an errounious release from jail, thusly this petitioner must be credited with all good time since released from jail, plus time spent in jail prior to release, and should go back to as far as May 18, 1983, over five years on a six year sentence.

Wherefore, premises considered petitioner's prays that this court would nullify the indictment against him because of the discriminatory practices of the Bexar County Grand Jury complained of herein and because of the non-endorsement by the Foreman of the Grand Jury. In the alternative, petitioner request that this Court order the clerk to forward his petition to the Court of Criminal Appeals in Austin, Texas.

Dated: The ____ day of _____, 1985 /s/ _____

Richard Russell
16106 N.W. Military
San Antonio, TX 78231

State of Texas

County of Bexar

Before me, the undersigned authority, on this day ____ of _____, 1985 did personally appear Richard Russell, and acknowledged this is a true and correct sworn petition for writ of Habeas Corpus.

Richard Russell

_____

Notary Public

State of Texas

_____

My Commission Expires:

_____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing petition has been forwarded to Judge Phil Chavarria, and the District Attorney of Bexar County Texas, and Bexar County Clerks Office.

Dated: The ____ day of _____, 1985 /s/ _____

Richard Russell

_____

16106 N.W. Military Highway
San Antonio, Texas 78231

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The Grand Jury of Bexar County, State of Texas, duly organized, empaneled and sworn as such, at the March Term, A.D., 1983, of the 227th District Court of said County, in said Court, at said term, do present that in the County and State aforesaid, and anterior to the presentment of this indictment, and on or about the 27TH day of SEPTEMBER A.D., 1981, RICHARD RUSSELL, hereinafter called defendant, did then and there knowingly and intentionally CONTROL AND MANAGE A PROSTITUTION ENTERPRISE THAT USED AT LEAST TWO PROSTITUTES, TO-WIT: CYNTHIA

KALOPLASTOS AND DIANE DILLARD BY THEN AND THERE OFFERING TO ACCEPT MONEY ON BEHALF OF THE PROSTITUTION ENTERPRISE KNOWN AS PARIS MODELING LOCATED AT 451 McCARTY IN THE CITY OF SAN ANTONIO, TEXAS; against the peace and dignity of the State.

_____

Foreman of the Grand Jury

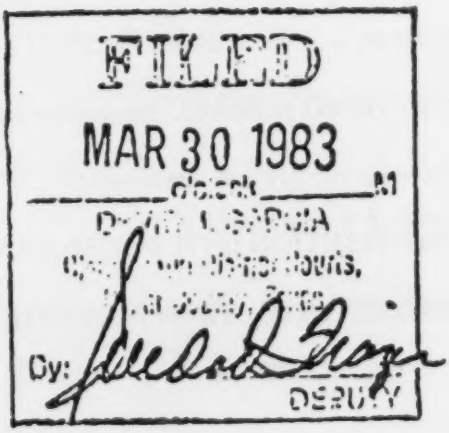
_____

THE FOLLOWING FOR DISTRICT CLERK'S USE ONLY

OFFENSE: AGGRAVATED PROMOTION OF PROSTITUTION
NAME: RICHARD RUSSELL
ADDRESS:
GRAND JURY NO. 152978
FILE NO. 83-CR-0827
WITNESS: STATE'S ATTORNEY

/de

290th



APPENDIX F
JUDGEMENT OF PERMANENT INJUNCTION

No. 81-CI-16876

THE STATE OF TEXAS	**IN THE DISTRICT COURT**
V.	
THE PUBLIC NUISANCE AT 451 McCARTY PARIS MODELING STUDIO RICHARD RUSSELL et. al.	**166TH JUDICIAL DISTRICT**
	Bexar County, Texas

ORDER AND JUDGMENT OF PERMANENT INJUNCTION

ON THIS DAY came on to be considered by the Court the Plaintiff's "First Amended Original Petition for Injunction of A Public Nuisance," and the "Original Answer" of the Defendant RICHARD RUSSELL. This Court has jurisdiction of this matter pursuant to TEX. CONST. art. V, § 8, and TEX. REV. CIV. STAT. ANN. arts. 4642 & 4666 - 4667 (Vernon 1952 & Vernon Supp. 1982-1983). The parties THE STATE OF TEXAS and RICHARD RUSSELL appeared before the Court in this cause and announced ready. The parties THE STATE OF TEXAS and RICHARD RUSSELL announced that they have agreed to waive any required hearings or presentation of evidence and proof regarding any temporary and/or permanent injunctions to be entered in this cause, and they announced that

they have settled their differences by an agreement for the entry of a permanent injunction against the Defendant RICHARD RUSSELL. Following due consideration, the Court finds that the parties' agreement concerning a permenent injunction to be entered against the Defendant RICHARD RUSSELL is meritorious, just and in the public interest.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the Defendant RICHARD RUSSELL, and his principals, officers, agents, servants, employees, attorneys, and/or other persons who receive actual notice of this "Order And Judgment of Permanent Injuction' by personal service or otherwise, be PERPETUALLY ENJOINED AND RESTRAINED from:

1. using the premises at 451 McCarty Road, San Antonio, Texas, or the premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner, for the promotion or aggravated promotion of prostitution, or compelling prostitution, as set forth by the provisions of TEX. PENAL CODE ANN. § § 43.01-43.05 (Vernon 1974 & Vernon Supp. 1982-1983);

2. permitting, allowing, maintaining, operating, supervising, managing, controlling, financing, renting, leasing, or occupying the premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner, for the promotion or aggravated promotion of prostitution, or compelling prostitution, as set forth by the provisions of TEX. PENAL CODE ANN. § § 43.01 -

43.05 (Vernon 1974 & Vernon Supp. 1982-1983);

3. using, permitting, allowing, maintaining, operating, supervising, managing, controlling, renting, financing, leasing, or occupying the premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner, for any commercial enterprise, identified as a massage establishment, massage parlor, spa, hot tub emporium, bath house, dance or dancing studio, nude studio, modeling studio, love parlor, or a business by any other name or commercial identity whatsoever, whose business in any manner involves the offering of a service or services intended to provide sexual stimulation or sexual gratification to any customer;

4. using, permitting, allowing, maintaining, operating, supervising, managing, controlling, renting, financing, leasing, or occupying the premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner, for any commercial enterprise involving massage; and

5. violating any provision, article or section of TEX. REV. CIV. STAT. ANN. arts. 2372 v & 2372 w (Vernon Supp. 1982-1983); of the Regulations of Bexar County, Texas, for Massage Parlors in effect at any time; of the Regulations of Bexar County, Texas, for the Location of Certain Sexually Oriented Commercial Enterprises in effect at any time; of the Code of the City of San Antonio regarding massage businesses, masseurs and sexually oriented commercial enterprises, in effect at any time; and of TEX. PENAL CODE ANN. § § 43.01-43.05 (Vernon 1974 & Vernon Supp. 1982-1983), or any other state penal law regarding prostitution in effect at any time on premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner.

It is further ORDERED that, pursuant to the parties' voluntary, full, good faith agreement, as indicated by their signatures below, this "Order And Judgment of Permanent Injunction" shall be effective at all times subsequent to this date in perpetuity, and shall not be rescinded, revoked, rejected, abandoned, breached or otherwise disavowed by any of the parties at any time or for any reason. It is also ORDERED that, pursuant to the desire and representations of the Plaintiff, and pursuant to TEX. R. CIV. P. 164, the Plaintiff shall take a non-suit in this cause as against all other Defendants, and those Defendants shall be, and are hereby, DISMISSED. It is also ORDERED that a final Judgment shall be entered of record fully in favor of the Plaintiff THE STATE OF TEXAS as against the Defendant RICHARD RUSSELL, and that each of the parties to this action shall bear their own costs.

IT IS SO ORDERED.
SIGNED and ENTERED this 18th day of May, 1983.

_____
Judge Presiding

AGREED AND APPROVED:

_____ DATE _____

MICHAEL BLACK
Assistant Criminal District Attorney
Bexar County, Texas
State Bar No. 02384400

SIGNED and ENTERED this 18th day of May, 1983.

Judge Presiding

AGGREED AND APPROVED:

MICHAEL BLACK
Assistant Criminal District Attorney
Bexar County, Texas
State Bar No. 02384400

DATE: 5/18/83

E. DICKINSON RYMAN
Assistant Criminal District Attorney
Bexar County, Texas
State Bar No. 17497000
ATTORNEYS FOR PLAINTIFF

Date: 5/18/83

ROYAL K. GRIFFIN
State Bar No. 08465000

Date: 5/18/83

ATTORNEY FOR DEFENDANT RICHARD RUSSELL

RICHARD RUSSELL

DEFENDANT

Date: 5/18/83

STATE OF TEXAS
COUNTY OF BEXAR
I DAVID J GARCIA
DISTRICT CLERK OF BEXAR COUNTY
Texas do hereby certify that the foregoing is a
true and correct copy of the original record now
in my lawful custody and possession as appears
of record in Vol. [illegible] Page [illegible] of Minutes
of said Court.

DAVID J. GARCIA
Bexar County, Texas
By [illegible] Deputy

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APPENDIX G
GRANTING ADULT PROBATION

MINUTES 175 JUDICIAL DISTRICT COURT,
BEXAR COUNTY, TEXAS

AT MAY TERM, A.D. 1986

ORDER DEFERRING ADJUDICATION OF GUILT
AND GRANTING ADULT PROBATION (NON-JURY)

THE STATE OF TEXAS VS. RICHARD RUSSELL

NO. 83-CR-0827
OFFENSE: AGGRAVATED PROMOTION OF PROSTITUTION

On this the 16th day of JUNE, A.D., 1983, in the above numbered and entitled cause, again appeared in open Court the State by her District Attorney, and the defendant RICHARD RUSSELL in person and by counsel, ROYAL GRIFFIN, for the purpose of a hearing on said defendant's application for Adult Probation. After receiving a guilty plea entered by defendant on _____, hearing the evidence and finding that it substantiates the defendant's guilt, deferring further proceedings without entering an adjudication of guilt, the Court is of the Opinion that Probation should be granted:

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that without entering an adjudication of guilt the defendant is hereby placed on Probation for a term of 6 years, effective JUNE 16, 1983 conditioned that said defendant:

1. Neither commit nor be convicted of any offense against the Laws of the State of Texas; or any other State or of the United States of America;
2. Avoid injurious or vicious habits and abstain from the illegal use of controlled substances, dangerous drugs nor use alcoholic beverages;
3. Avoid places and persons of harmful or disreputable character, including places where controlled substances and dangerous drugs are illegally possessed, sold or used and not associate with persons who illegally possess, sell or use controlled substances and dangerous drugs and not associate with persons of Criminal records.
4. Obtain and keep gainful employment in a lawful occupation;
5. Report, in person, to the Adult Probation Officer of Bexar County, Texas on the 16th day of each month and when said day of the month falls on a Saturday, Sunday, or legal holiday, then you will report on the next working day; and conduct yourself in a proper, and orderly manner.
6. Permit the Adult Probation Officer, or his Assistants, to visit you at your home, or elsewhere;
7. Remain within Bexar County, Texas, unless permitted in writing to depart by the Court and/or by the Adult Probation Officer;
8. Not leave the State of Texas, without the written consent of this Court filed among the papers of the cause;
9. Support your dependents that you now have or that you may acquire during the term of this probation;
10. Report any change of address, change of job or arrest to the Adult Probation Officer within 48 hours;
11. Pay the Court costs within 60 days from and after June 16, 1983 through the Adult Probation Office, Bexar County, Texas;
12. Pay restitution in the amount of _____ through the Adult Probation Office of Bexar County, Texas, at the rate of_____ per_____ , the first payment due and payable on_____ and a payment of _____ , due and payable every _____ day of each month thereafter until the amount of restitution has been paid.
13. Pay a supervisory fee to the 175th District Court, Bexar County, Texas through the Adult Probation Office, Bexar County, Texas, in the amount of $15.00 per month, on the 16th day of each month, beginning July 16, 1983 and continuing during the term of probation.

14. Pay a fine in the amount of $_____, through the Adult Probation Office of Bexar County, Texas, at the rate of $ _____ per month, the first payment due and payable on _____, and a payment of $ _____ due and payable every _____ day of each month until the amount has been paid.
15. Will immediately report to and apply for _____ treatment and/or diagnostic evaluation to _____
(Agency)
_____
(Address)
and will comply with all treatment, instructions, rules and tests directed by the head of or authorized personnel of this agency. You will remain in this program until discharged. Upon rejection or non-acceptance of any phase of this program you will immediately report to the Bexar County Adult Probation and Rehabilitation Office.
16. Is required to comply completely with each of the provisions of attached "Orders and Judgement of Permanent Injunction, No. 81-CI-16876," incorporated by reference herein full.

Vol. 57CR Pages 747 _____
JUDGE PRESIDING

You are hereby advised that under the Laws of this State, the Court shall determine the terms and conditions of your Adult Probation and may at any time during the period of your probation, alter or modify the terms and conditions of your probation. THE COURT, ALSO, HAS THE AUTHORITY, AT ANY TIME DURING THE PERIOD OF YOUR PROBATION, TO REVOKE SAME FOR VIOLATION OF ANY OF THE CONDITIONS OF YOUR PROBATION SET OUT ABOVE.

The Court has placed you on probation, believing that if you sincerely try to obey and comply with the conditions of your probation, your attitude and conduct will improve to the benefit of the public and of yourself.

I acknowledge receipt of a copy of the Conditions of Adult Probation and fully understand same.

Richard Russell

Adult Probationer

A copy furnished to the above-named Probationer and noted on the docket this 16th day of June A.D., 1983

Jesse McClay

Clerk, 175th Judicial District Court,
Bexar County, Texas

Address: 16106 N.W. Military
San Antonio, Texas 78231

Stanley Gohran

Adult Probation Officer
BEXAR COUNTY ADULT PROBATION
AND REHABILITATION
601 Dolorosa, San Antonio, Texas 78207
Telephone: 227-0555

APPENDIX H
MOTION FOR CONTEMPT

NO. 81-CI-16876

THE STATE OF TEXAS	§	**IN THE DISTRICT COURT OF**
V.	§	
The Public Nuisance at 451 McCarty, Paris Modeling Studio, Richard Russell, et al.	§	**166th Judicial District**

PLAINTIFF'S SUPPLEMENTAL MOTION FOR CONTEMPT

TO THE HONORABLE JUDGE OF THE COURT:

NOW COMES the Plaintiff, THE STATE OF TEXAS, by and through the Criminal District Attorney of Bexar County, Texas, to file this its Supplemental Motion For Contempt pursuant to TEX. R. CIV. P. 692. In support of this motion, the Plaintiff would show the Court respectfully as follows:

I.

This Plaintiff adopts, reasserts, and incorporates into this motion by reference, all of the averments and allegations of this Plaintiff's "Motion For Contempt," filed in this cause on May 20, 1983, and still pending for hearing on the docket of the Court.

II.

In addition to the facts alleged by this Plaintiff on May 20, 1983, as constructive contempt by the Defendant Richard Russell, this

Plaintiff would show the Court that the Defendant continues contemptuously to violate the specific terms of the permanent injunction of a public nuisance entered against him and his business at 451 McCarty Road, San Antonio, Texas, or at any other place, by:

1. Occupying the premises on May 24, 1983, in direct violation of the injunction;

2. Removing female employees to other locations at unknown dates and times since the entry of the injunction for operating in direct violation of the injunction;

3. "Selling" the business at 451 McCarty Road to another person under terms which directly violate the injunction;

4. Occupying the business at 451 McCarty Road on June 7, 1983, and operating the business in direct violation of the injunction by allowing or permitting, directly or indirectly, persons of the premises to agree with at least one person to engage in sexual intercourse for a fee;

5. By agreeing in a purported "Bill of Sale" to assist the "buyer" of the business at 451 McCarty Road in "terms of re-opening the business. . .until June 30, 1983;" and by agreeing with the alleged "buyer" to receive "fifty percent of the modeling studio's gross proceeds for a five-year period beginning June 5, (1983);" in direct violation of the injunction, and by agreeing that the alleged "buyer" "cannot sell it within the next five years without (the Defendant's) consent;"

6. Other acts in direct violation of the injunction, actual, threatened or contemplated, direct or indirect, that are unknown to the Plaintiff at this time.

III.

Unless the Court finds and holds the Defendant in contempt, for the acts alleged in the Plaintiff's "Motion For Contempt," and in its "Supplemental Motion For Contempt," following a hearing before

the Court, the Defendant in all likelihood will continue to violate the terms of the innjunction, directly or indirectly, for a period at least of five years, in ways known and unknown to the Plaintiff. Accordingly, the Defendant should be held in contempt of the Court, and the Court should assess an appropriate fine against the Defendant and direct that the Defendant be committed to jail without bail until he purges himself of his contempt in the manner directed by the Court.

WHEREFORE, PREMISES CONSIDERED, this Plaintiff prays respectfully that the Defendant Richard Russell be held in contempt by this Court pursuant to TEX. R. CIV. P. 692 following a hearing of this motion by the Court, that the Court impose a fine against the Defendant in the amount of five thousand dollars or in any amount considered reasonable by the Court for the Defendant's continuing contemptuous misconduct since May 18, 1983, and that the Court commit the Defendant to jail without bail until he purges himself of his contempt in the manner that the Court may direct.

Respectfully submitted,

SAM D. MILLSAP, JR.
Criminal District Attorney
Bexar County, Texas

By: _____
MICHAEL BLACK
Assistant Criminal District Attorney
State Bar No. 02384400

By: _____
E. DICKINSON RYMAN
Assistant Criminal District Attorney
State Bar No. 17497000

Bexar County Courthouse
San Antonio, Texas 78205
(512) 222-2653

ATTORNEYS FOR PLAINTIFF

SHOW CAUSE ORDER

On this day came on to be considered by the Court the Plaintiff's Motion For Contempt and Supplemental Motion for Contempt. The court determines that the motins should be considered by the Court following a hearing in open court. It is therefore ORDERED that the Defendant be directed and required to appear before the 175th Judicial District Court of Bexar County, Texas, on Friday, June 17, 1983, at 9:00 a.m., to answer allegations that he has disobeyed the permanent injunction in this cause, directly or indirectly, on several occasions, and to show cause why he should not be adjudged in contempt of this Court.

SIGNED and ENTERED this 10th day of June, 1983.

PHIL CHAVARRIA, JR.
Judge Presiding

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this motion and show Cause Order has been served by hand-delivery to the last-known attorney for the Defendant, WILLIAM T. REECE, JR., 419 South Main, Suite 333, San Antonio, Texas 78204.

MICHAEL BLACK

Respectfully submitted,

SAM D. MILLSAP, JR.
Criminal District Attorney
Bexar County, Texas

By: _____
MICHAEL BLACK
Assistant Criminal District Attorney
State Bar No. 02384400

By: _____
E. DICKINSON RYMAN
Assistant Criminal District Attorney
State Bar No. 17497000
Bexar County Courthouse
San Antonio, Texas 78205
(512) 222-2653

ATTORNEYS FOR PLAINTIFF

SHOW CAUSE ORDER

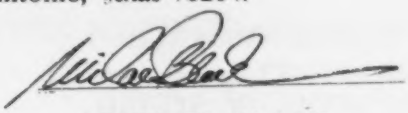
On this day came on to be considered by the Court the Plaintiff's Motion For Contempt and Supplemental Motion for Contempt. The court determines that the motins should be considered by the Court following a hearing in open court. It is therefore ORDERED tha thte Defendant be directed and required to appear be fore the 175th Judicial District Court of Bexar County, Texas, on Friday, June 17, 1983, at 9:00 a.m., to answer allegations that he has disobeyed the permanent injunction in this cause, directly or indirectly, on several occasions, and to show cause why he should nbot be adjudged in conatempt of this Court.

SIGNED and ENTERED this 10th day of June, 1983.

Judge Presiding

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this motion and show Cause Order has been served by hand-delivery to the last-known attorney for the Defendant, WILLIAM T. REECE, JR., 419 South Main, Suite 333, San Antonio, Texas 78204.



MICHAEL BLACK

APPENDIX I
JUDGMENT OF CONTEMPT
AND ORDER OF COMMITMENT

No. 81-CI-16876

THE STATE OF TEXAS	**IN THE DISTRICT COURT**
V.	
THE PUBLIC NUISANCE AT 451 McCARTY PARIS MODELING STUDIO RICHARD RUSSELL et. al.	**166TH JUDICIAL DISTRICT**
	Bexar County, Texas

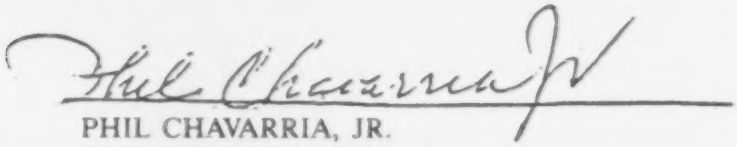
JUDGMENT OF CONTEMPT
AND ORDER OF COMMITMENT

BEFORE THE COURT are the Plaintiff's original and supplemental motions for contempt against the Defendant Richard Russell. Following the presentation of evidence by the parties in open court, the Court is of the opinion, and hereby finds, that the Defendant Richard Russell is GUILTY OF CONTEMPT OF THE COURT as reflected in the record of the proceedings. The Defendant violated the agreed "Order And Judgment Of Permanent Injunction" entered by the Court on May 18, 1983, by: allowing premises under his control at 451 McCarty Road, San Antonio, Texas, to be used for the promotion of prostitution on May 19, 1983; by managing and controlling such premises on May 24, 1983, and on subsequent dates,

in a manner designed to violate provisions 1-3 of the permanent injunction; by allowing premises under his control and supervision at 451 McCarty Road, San Antonio, Texas, to be used for the promotion of prostitution on June 7, 1983. The Court finds that the Defendant committed those violations beyond a reasonable doubt.

It is therefore ORDERED, ADJUDGED and DECREED that RICHARD RUSSELL be in contempt of this Court. It is further ORDERED that he shall be punished by confinement in the Bexar County Jail for a term of three days, beginning at 7:00 p.m. on this date, and that the Defendant shall be assessed a fine in the amount of five hundred dollars ($500.00), due and payable at 7:00 p.m. on this date to Joe Neaves, Sheriff of Bexar County, Texas.

signed and ENTERED this 24th day of June, 1983.



PHIL CHAVARRIA, JR.
Judge Presiding

The State of Texas	**In the 175th Court**
vs	**of**
Richard Russell	**Bexar County, Texas**

MOTION TO ENTER ADJUDICATION OF GUILT

AND REVOKE PROBATION

TO THE JUDGE OF SAID COURT: Honorable Phil Chavarria

Now comes the Criminal District Attorney of Bexar County, Texas and would show the Court that the Defendant in the above styled and numbered cause was placed on probation under Article 4212, Section 3d, Texas Code of Criminal Procedure for the offense of AGGRAVATED PROMOTION OF PROSTIUTION and was placed on probation by the Court on the 16TH day of JUNE A.D., 1983, for a period of SIX (6) years under the provisions of the Adult Probation and Parole Law as reflected by Judgement entered in this cause:

That thereafter, during the term of said probation, the defendant violated the terms and conditions therein in the following particulars, to-wit:

VIOLATED CONDITION NO. 16: PARAGRAPH I
That thereafter and during the term of said Probation, the defendant, Richard Russell, in the County of Bexar and the State of Texas, and on or about the 17th day of July A.D., 1983, did then and there fail to comply completely with each of the provisions of attached, "Orders and Judgement of Permanent Injunction, No. 81-CI-16876," incorporated by reference herein in full, against the peace and dignity of the State, and in violation of Condition No. 16.

VIOLATED CONDITION NO. 16: PARAGRAPH II
That thereafter and during the term of said Probation, the defendant, Richard Russell, in the County of Bexar and the State of Texas, and on or about the 17th day of July, A.D., 1983, did then and there use the premises at 451 McCarty Road, San Antonio, Texas, for the promotion and aggravated promotion of prostitution and compelling prostitution, against the peace and dignity of the State, and in violation of Condition No. 16.

VIOLATED CONDITION NO. 16: PARAGRAPH III

That thereafter and during the term of said Probation, the defendant, Richard Russell, in the County of Bexar and the State of Texas, and on or about the 17th day of July A.D., 1983, did then and there, permit, allow, maintain, operate, supervise, manage, control, finance, rent, lease, and occupy the premises at 451 McCarty Road, San Antonio, Texas, for the purposes of promoting and aggravated promotion of prostitution, against the peace and dignity of the State, and in violation of Condition No. 16.

Premises considered, therefore, the Criminal District Attorney, Bexar County, Texas, moves the Court to cause a warrant to be issued for arrest of said Defendant, and that upon his arrest hearing be held to enter an Adjudication of Guilt and pronounce sentence accordingly.

Dick Ryman

Assistant Criminal District Attorney
Bexar County, Texas

ORDER

The Clerk will issue capias for arrest of the Defendant in the above styled and numbered cause, directing that he be held to answer instanter to this Court for violation of the terms and conditions of his probation herein.

DATE: 8-26 1986

Phil Chavarria

PHIL CHAVARRIA
175TH JUDICIAL DISTRICT COURT
BEXAR COUNTY, TEXAS

ENTERED CRT Vol 5412 Page 497

FILED
175TH JUDICIAL DISTRICT
AUG 25 1983
BEXAR COUNTY, TEXAS
Clerk District Courts
Bexar County, Texas
By Joyce McKay Deputy

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APPENDIX J
MOTION TO ENTER ADJUDICATION OF GUILT AND REVOKE PROBATION

No-83-CR-827

The State of Texas	**The 175th Judicial Court**
vs	**of**
Richard Russell	**Bexar County, Texas**

MOTION TO ENTER ADJUDICATION OF GUILT AND REVOKE PROBATION

TO THE JUDGE OF SAID COURT: Honorable Phil Chavarria

Now comes the Criminal District Attorney of Bexar County, Texas and would show the Court that the Defendant in the above styled and numbered cause was place don probation under Article 4212, Section 3d, Texas Code of Criminal Procedure for the offense of AGGRAVATED PROMOTION OF PROSTIUTION and was placed on probation by the Court on the 16TH day of JUNE A.D., 1983, for a period of SIX (6) years under the provisions of the Adult Probation and Parole Law as reflected by Judgement entered in this cause:

That thereafter, during the term of said probation, the defendant violated the terms and conditions therein in the following particulars, to-wit:

VIOLATED CONDITION NO. 16: PARAGRAPH I
That thereafter and during the term of said Probation, the defendant, Richard Russell, in the County of Bexar and the State of Texas, and on or about the 17th day of July A.D., 1983, did then and there fail to comply completely with each of the provisions of attached "Orders and Judgement of Permanent Injuction, No. 81-CI-16876," incorporated by reference herein in full, against the peace and dignity of the State, and in violation of Condition No. 16.

VIOLATED CONDITION NO. 16: PARAGRAPH II
That thereafter and during the term of said Probation, the defendant, Richard Russell, in the County of Bexar and the State of Texas,

and on or about the 17th day of July, A.D., 1983, did then and there use the premises at 451 McCarty Road, San Antonio, Texas, for the promotion and aggravated promotion of prostitution and comprelling prostitution, against the peace and dignity of the State, and in violation of Condition No. 16.

VIOLATED CONDITION NO. 16: PARAGRAPH III
That thereafter and during the term of said Probation, the defendant, Richard Russell, in the County of Bexar and the State of Texas, and on or about the 17th day of July A.D., 1983, did then and there, permit, allow, maintain, operate, superrvise, manage, control, finance, rent, lease, and occupy the premises at 451 McCarty Road, San Antonio, Texas, for the purposes of promoting and aggravated promotion of prostitution, against the peace and dignity of the State, and in violation of Condition No. 16.

Premises considered, therefore, the Criminal District Attorney, Bexar County, Texas, moves the Court to cause a warrant to be issued for arrest of said Defendant, and that upon his arrest hearing be held to enter an Adjudication of Guilt and pronounce sentence accordingly.

Assistant Criminal District Attorney
Bexar County, Texas

ORDER

The Clerk will issue capias for arrest of the Defendant in the above styled and numbered cause, directing that he be held to answer instanter to this Court for violation of the terms and conditions of his probation herein.

DATE:____ __19____

PHIL CHAVARRIA
175TH JUDICIAL DISTRICT COURT
BEXAR COUNTY, TEXAS

No. 81-CI-16876

THE STATE OF TEXAS	**IN THE DISTRICT COURT**
V.	
THE PUBLIC NUISANCE AT 451 McCARTY PARIS MODELING STUDIO RICHARD RUSSELL et. al.	**166TH JUDICIAL DISTRICT**
	Bexar County, Texas

ORDER AND JUDGMENT OF PERMANENT INJUNCTION

ON THIS DAY came on to be considered by the Court the Plaintiff's "First Amended Original Petition for Injunction of A Public Nuisance," and the "Original Answer" of the Defendant RICHARD RUSSELL. This Court has jurisdiction of this matter pursuant to TEX. CONST. art. V, § 8, and TEX. REV. CIV. STAT. ANN. arts. 4642 & 4666 - 4667 (Vernon 1952 & Vernon Supp. 1982-1983). The parties THE STATE OF TEXAS and RICHARD RUSSELL appeared before the Court in this cause and announced ready. The parties THE STATE OF TEXAS and RICHARD RUSSELL announced that they have agreed to waive any required hearings or presentation of evidence and proof regarding any temporary and/or permanent injunctions to be entered in this cause, and they announced that they have settled their differences by an agreement for the entry of a permanent injunction against the Defendant RICHARD

RUSSELL. Following due consideration, the Court finds that the parties' agreement concerning a permenent injunction to be entered against the Defendant RICHARD RUSSELL is meritorious, just and in the public interest.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the Defendant RICHARD RUSSELL, and his principals, officers, agents, servants, employees, attorneys, and/or other persons who receive actual notice of this "Order And Judgment of Permanent Injuction' by personal service or otherwise, be PERPETUALLY ENJOINED AND RESTRAINED from:

1. using the premises at 451 McCarty Road, San Antonio, Texas, or the premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner, for the promotion or aggravated promotion of prostitution, or compelling prostitution, as set forth by the provisions of TEX. PENAL CODE ANN. § § 43.01-43.05 (Vernon 1974 & Vernon Supp. 1982-1983);

2. permitting, allowing, maintaining, operating, supervising, managing, controlling, financing, renting, leasing, or occupying the premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner, for the promotion or aggravated promotion of prostitution, or compelling prostitution, as set forth by the provisions of TEX. PENAL CODE ANN. § § 43.01 - 43.05 (Vernon 1974 & vernon Supp. 1982-1983);

3. using, permitting, allowing, maintaining, operating, supervising, managing, controlling, renting, financing, leasing, or occupying the premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner, for any commercial enterprise, identified as a massage establishment, massage parlor, spa, hot tub emporium, bath house, dance or dancing studio, nude studio, modeling studio, love parlor, or a business by any other name or commercial identity whatsoever, whose business in any manner involves the offering of a service or services intended to provide sexual stimulation or sexual gratification to any customer;

4. using, permitting, allowing, maintaining, operating, supervising, managing, controlling, renting, financing, leasing, or occupying the premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner, for any commercial enterprise involving massage; and

5. violating any provision, article or section of TEX. REV. CIV. STAT. ANN. arts. 2372 v & 2372 w (Vernon Supp. 1982-1983); of the Regulations of Bexar County, Texas, for Massage Parlors in effect at any time; of the Regulations of Bexar County, Texas, for the Location of Certain Sexually Oriented Commercial Enterprises in effect at any time; of the Code of the City of San Antonio regarding massage businesses, masseurs and sexually oriented commercial enterprises, in effect at any time; and of TEX. PENAL CODE ANN. § § 43.01-43.05 (Vernon 1974 & Vernon Supp. 1982-1983), or any other state penal law regarding prostitution in effect at any time on premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner.

It is further ORDERED that, pursuant to the parties' voluntary, full, good faith agreement, as indicated by their signatures below, this "Order And Judgment of Permanent Injunction" shall be effective at all times subsequent to this date in perpetuity, and shall not be rescinded, revoked, rejected, abandoned, breached or otherwise disavowed by any of the parties at any time or for any reason. It is also ORDERED that, pursuant to the desire and representations of the Plaintiff, and pursuant to TEX. R. CIV. P. 164, the Plaintiff shall take a non-suit in this cause as against all other Defendants, and those Defendants shall be, and are hereby, DISMISSED. It is also ORDERED that a final Judgment shall be entered of record fully in favor of the Plaintiff THE STATE OF TEXAS as against the Defendant RICHARD RUSSELL, and that each of the parties to this action shall bear their own costs.

IT IS SO ORDERED.
SIGNED and ENTERED this 18th day of May, 1983.

_____
Judge Presiding

AGREED AND APPROVED:

_____ DATE _____

MICHAEL BLACK
Assistant Criminal District Attorney
Bexar County, Texas
State Bar No. 02384400

SIGNED and ENTERED this 18th day of May, 1983.

Judge Presiding

AGGREED AND APPROVED:

DATE: 5/10/83

MICHAEL BLACK
Assistant Criminal District Attorney
Bexar County, Texas
State Bar No. 02384400

Date: 5/18/83

E. DICKINSON RYMAN
Assistant Criminal District Attorney
Bexar County, Texas
State Bar No. 17497000
ATTORNEYS FOR PLAINTIFF

Date: 5/18/83

ROYAL K. GRIFFIN
State Bar No. 08465000

ATTORNEY FOR DEFENDANT RICHARD RUSSELL

Date: 5/18/83

RICHARD RUSSELL

DEFENDANT

STATE OF TEXAS
COUNTY OF BEXAR
I, DAVID J. GARCIA
DISTRICT CLERK OF BEXAR COUNTY
Texas, do hereby certify that the foregoing is a true and correct copy of the original record now in my lawful custody and possession, as appears of record filed May 18, 1983 in my office.
Witness my official hand and seal of office this
5-18-83
DAVID GARCIA, DISTRICT CLERK
Bexar County, Texas
By Mary Salvador, Deputy

APPENDIX K
MOTION TO SET BOND PENDING APPEAL

No. 83-CR-0827

THE STATE OF TEXAS	**IN THE DISTRICT COURT**
V.	
RICHARD RUSSELL	**175TH JUDICIAL DISTRICT** **Bexar County, Texas**

MOTION TO SET BOND PENDING APPEAL

Now comes Defendant, RICHARD RUSSELL, by and through his undersigned counsel and respectfully moves this Honorable Court to set an appeal bond in a reasonable sum in this case and, for good cause, would show the following:

I.

On October 20, 1983 a hearing was held in this Honorable Court on the State's Motion to Revoke Defendant's Probation. After hearing evidence this Court proceeded to adjudicate, revoked Defendant's probation and sentenced him to six (6) years imprisonment in the Texas Department of Corrections.

II.

Notice of appeal was filed in open court on October 20, 1983.

III.

On October 20, 1983 this Honorable Court set bail on appeal in this case in the amount of $40,000.00, Defendant made bond in this amount through Alamo Bail Bonds, and was released.

IV.

On October 25, 1983 this Court signed an order revoking Defendant's bond pending appeal and remanding him to jail without bond, declaring that Defendant was likely to commit the offense or retaliation if allowed to remain on bond.

V.

Defendant respectfully submits that he is entitled to bail in light of the factors enumerated in TEX. CODE CRIM. PROC. ANN. Arts. 17.15 and 44.04(c).

VI.

There is no cause to believe that Defendant will not appear if and when his conviction becomes final, nor is there sufficient showing that Defendant is likely to commit another offense while on bail.

VII.

Alamo Bail Bonds has indicated it is willing to serve again as Defendant's surety, if his bond were reinstated in the amount of $40,000.00.

VIII.

Defendant respectfully requests an evidentiary hearing on this matter at which he can put on witnesses and proof which will demonstrate his entitlement to a reduction of bail pending appeal. **Ex parte Williams,** 630 sw.2d 803, 804 (Tex. App. — San Antonio, 1982) guarantees Defendant the right to such a hearing. Defendant has available numerous witnesses who are willing to testify to the factors enumerated in Article 17.15 of the Texas Code of Criminal Procedure.

Wherefore, premises considered, Defendant prays that this Court set his bond on appeal at $40,000.00 cash or corporate surety.

Respectfully submitted:

GOLDSTEIN, GOLDSTEIN & HILLEY
29th Floor Tower Life Building
San Antonio, Texas 78205

By:_____
Gerald H. Goldstein
Bar No. 08101000

Attorney for Defendant

STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this day personally

appeared RICHARD RUSSELL, who, under oath eposed and stated the following:

"My name is RICHARD RUSSELL and I am the Defendant in this appeal. I have read the above and it is all true and correct."

_____

Richard Russell

SUBSCRIBED AND SWORN TO BEFORE ME by the said RICHARD RUSSELL on this the _____ day of November, 1983.

APPENDIX L

COURT OF APPEALS OPINION

Court of Appeals
Fourth Supreme Judicial District of Texas
San Antonio

OPINION

Appeal No. 04-83-00499-CR

RICHARD RUSSELL,
Appellant

v.

STATE OF TEXAS,
Appellee

Appeal from the 175th District Court
of Bexar County

Trial Court No. 83-CR-827
Honorable Phil Chavarria, Jr., Judge Presiding

Opinion By: Pete Tijerina, Associate Justice

Sitting: **Rudy Esquivel, Associate Justice**
Pete Tijerina, Associate Justice
Preston H. Dial, Jr., Associate Justice

Delivered and Filed: January 30, 1985

AFFIRMED.

This is a probation revocation case. Appellant was charged by indictment with aggravated promotion of prostitution and, on trial before the court, pleaded nolo contendere. The trial court deferred adjudication of guilt and placed appeallant on probation for a term of six (6) years and further assessed a Five Thousand Dollar (5,000.00) fine.

At issue is condition of probation number sixteen (16), which requires appellant to comply completely with each of the provisions of attached "Orders and Judgment of Permanent Injunction, No. 81-CI-16876," incorporated by reference in full.[1] The State filed a motion to enter adjudication of guilt and revoke.

1. The Order and Judgment of Permament Injunction enjoined and restrained appellant in the following respects:

> 1. using the premises at 451 McCarty Road, San Antonio, Texas, or the premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner, for the promotion or aggravated promotion of prostitution, or compelling prostitution, as set forth by the provisions of TEX. PENAL CODE ANN. § § 43.01-43.05 (Vernon 1974 & Vernon Supp. 1982-1983);
>
> 2. permitting, allowing, maintaining, operating, supervising, managing, controlling, financing, renting, leasing, or occupying the premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner, for the promotion or

3. using, permitting, allowing, maintaining, operating, supervising, managing, controlling, renting, financing, leasing, or occupying the premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner, for any commercial enterprise, identified as a massage establishment, massage parlor, spa, hot tub emporium, bath hour, dance or dancing studio, nude studio, modeling studio, love parlor, or a business by any other name or commercial identity whatsoever, whose business in any manner involves the offering of a service or services intended to provide sexual stimulation or sexual gratification to any customer;

probation, alleging that appellant violated Condition No. 16 as follows:

VIOLATED CONDITION NO. 16:Paragraph I

That thereafter and during the term of said Probation, the defendant, Richard Russell, in the County of Bexar and the State of Texas, and on or about the 17th day of July A.D., 1983, did then and there fail to comply completely with theach of the provisions of attached "Orders and Judgment of Permanent Injunction, No. 81-CI-16876," incorporated by reference herein in full, against the peace and dignity of the State, and in violation of Condition No. 16.

VIOLATED CONDITION NO. 16: Paragraph II

That thereafter and during the term of said Probation, the defendant, Richard Russell, in the

4. using, permitting, allowing, maintaining, operating, supervising, managing, controlling, renting, financing, leasing, or occupying the premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of

of Bexar County, Texas, in any place or manner, for any commercial enterprise involving massage; and

5. violating any provision, article or section of TEX. REV. CIV. STAT. ANN. arts. 2372v & 2372w (Vernon Supp. 1982-1983); of the Regulations of Bexar County, Texas, for Massage Parlors in effect at any time; of the Regulations of Bexar County, Texas, for the Location of Certain Sexually Oriented Commercial Enterprises in effect at any time; of the Code of the City of San Antonio regarding massage businesses, masseurs and sexually oriented commercial enterprises, in effect at any time; land of TEX. PENAL CODE ANN. ' ' 43.01-43.05 (Vernon 1974 & Vernon Supp. 1982-1983), or any other state penal law regarding prostitution in effect at any time on premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner.

County of, Bexar and the State of Texas, and on or about the 17th day of July, A.D., 1983, did then and there use the premises at 451 McCarty Road, San Antonio, Texas, for the promotion and aggravated promotion of prostitution and compelling prostitution, against the peace and dignity of the State, and in violation of Condition No. 16.

VIOLATED CONDITION NO. 16: Paragraph III

That thereafter and during the term of said Probation, the defendant, Richard Russell, in the County of Bexar and the State of Texas, and on or about the 17th day of July A.D., 1983, did then and there permit, allow, maintain, operate, supervise, manage, control, finance, rent lease, and occupy the premises at 451 McCarty Road, San Antonio, Texas, for the purposes of promoting and aggravated promotion of prostitution, against the peace and dignity of the State, and in violation of Condition No. 16.

Appellant pleaded not true and after a full evidentiary hearing the court found that appellant had violated the terms of his probation. He was thus adjudicated guilty of aggravated promotion of prostitution. The probation was revoked and sentence was imposed.

Appellant contends that the trial court erroneously revoked his probation for violation of Condition No. 16 as follows: (1) conditioning of probation No. 16 is not included in the conditions of probation provided by statute; the court added this condition in violation of article II, section I of the Texas Constitution; (2) appellant was denied due process by the court's failure to file written findings; (3) Condition No. 16 was vague and indefinite and therefore invalid; (4) Condition No. 16 does not have a reasonable relationship to the treatment of the accused and the protection of the public; and (5) the evidence was insufficient to prove the violation by a preponderance of the evidence.

It is well settled that no appeal may be taken from the hearing in which a trial court determines to proceed with an adjudication of guilt on the original charge. **Daniels v. State,** 615 S.W.2d 771, 771 (Tex. Crim. Appl. 1981); **Wright v. State,** 592 S.W.2d 604, 606 (Tex. Crim. App. 1980); **Williams v. State,** 592 S.W.2d 931, 932 (Tex. Crim. App. 1979). Because all of appellant's grounds of error involve the hear-

ing from which he cannot appeal, he has presented noting for our review. Nevertheless, appellant has raised questions of constitutional dimension. We will, therefore, address his grounds of error.

Appellant first complains that Condition No. 16 is unconstitutional because it is not one of the conditions statutority provided by the legislature. The conditions of probation which the court may impose **when probation is recommended by the jury** are limited to the statutory conditions provided for in TEX. CODE CRIM. PROC. ANN. art. 42.12, § 6 (Vernon Supp. 1984). **Morales v. State,** 541 S.W.2d 443, 445 (Tex. Crim. App. 1976). In the instant case, probation was granted by the court. Therefore, the trial court is not limited to the probationary conditions set forth in § 6 of art. 42.12, **Supra,** provided the condition is a reasonable one. **Chacon v. State,** 558 S.W.2d 874, 875 (Tex. Crim. App. 1977). The court has wide discretion in selecting reasonable conditions of probation; however, the conditions should have a reasonable relationship to the treatment of the accused and the protection of the public. **Macias v. State,** 649 S.W.2d 150, 152 (Tex. App. — El Paso 1983, no pet.).

Condition No. 1 provides that appellant while on probation is not to "commit nor be convicted of any offense against the laws of the State of Texas; or any other State or of the United States." Condition

No. 16 prohibits appellant from engaging directly or indirectly in the same criminal activity that resulted in his prosecution. Therefore, Condition No. 16 could be construed as an expansion of Condition No. 1, providing the desired specificity. **See Tyra v. State,** 644 S.W.2d 865, 869 (Tex. App. — Amarillo 1982, no pet.), **citing Flores v. State,** 513 S.W.2d 66, 69 (Tex. Crim. App. 1974). There is nothing in this record to indicate that the trial court's imposition of the added condition of probation constituted an infringement of legislative powers. Ground of error one is overruled.

In his second ground of error, appellant complains that the trial court erred in failing to make written findings in support of its order revoking probation. Appellant cites **Gagnon v. Scarpelli,** 411 U.S. 778, 786, 93 S. Ct. 1756, 1762, 36 L. Ed. 2d 656, 664 (1973), which held that minimum requirements of due process include a written statement by the fact finder as to the evidence relied on and reasons for revoking probation. Texas courts, however, require a defendant to make a request for specific findings. In the absence of such a request, the failure of the trial court to make specific findings in the order revoking probation is not reversible error. **King v. State,** 649 S.W.2d 42, 46 (Tex. Crim. App. 1983, en banc); **Bradley v. State,** 608 S.W.2d 652, 655 (Tex. Crim. App. 1980); **Clapper v. State,** 562 S.W.2d 250,

251 (Tex. Crim. App. 1978). In the instant case, appellant concedes that no request was made for specific findings. Appellant was present and represented by counsel at the hearing on the motion to revoke his probation. He presented witnesses on his behalf and contested every issue. The order revoking probation is supported by a preponderance of competent evidence introduced at the evidentiary hearing. Unlike **McDonald v. State,** 608 S.W.2d 192 (Tex. Crim. App. 1980), there was no reliance by the trial on "judicial notice" of the testimony in the prior proceedings. Therefore, we conclude that the finding recited in the court's order that the evidence sustained the violations alleged in the motion to revoke probation satisfies due process requirements. The second ground of error is overruled.

Appellant next complains that Condition No. 16 is vague and indefinite and does not inform him with sufficient certainty as to the prohibited conduct because: (1) the number of persons who might disobey the injunction is indefinite; and (2) "using the premises. . .in any. . .manner for the promotion or aggravated promotion of prostitution or compelling prostitution" does tell him what he must do to avoid revocation. Generally, he argues that paragraphs II and III do not give him notice of the proscribed conduct. It is obvious that the language of the injunction tracks TEX. PENAL CODE ANN.

[8] 43.04(A) (Vernon 1974), Aggravated Promotion of Prostitution, which provides in pertinent part as follows:

> A person commits an offense if he knowingly owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.

A similiar challenge that the statute was void for being vague and indefinite was made in **Floyd v. State,** 575 S.W.2d 21, 24 (Tex. Crim. App. 1978), **appeal dismissed,** 442 U.S. 907, 99 S. Ct. 2817, 61 L. Ed. 2d 272 (1979), and the court held:

> Both common logic and the rules of grammar dictate that a prostitution enterprise that uses prostitutes necessarily uses them for prostitution. . . The terms complained of by appellant do no render Section 43.04 so ambiguous and vague that men or ordinary intelligence would guess at its meaning or differe as to its application. . . Appellant had sufficient notice of the type of conduct proscribed by the stature and therefore he was not deprived of procedural due process.

See also Wood v. State, 573 S.W.2d 207, 219 (Tex. Crim. App. 1978).

In **Curtis v. State,** 548 S.W.2d 57, 58 (Tex. Crim. App. 1977), cited by appellant, the "condition" merely recited, "remain within a specified place." In this case, condition No. 16 specificially prohibits appellant from directly or indirectly using the premises at 451 McCarty Road, San Antonio, Texas, for promotion and aggravated promotion of prostitution. This, without more, is sufficient notice to

appellant of the conduct proscribed. "There is always value in making all conditions explicit, primarily as an aid to the offender in increasing his understanding of what is expected of him." **Flores v. State,** 513 S.W.2d 66, 69 (Tex. Crim. App. 1974). The third ground of error is overruled.

The fourth gound of error is that Condition No. 16 does not have a reasonable relationship to the accused and the protection of the public as required by **Hernandez v. State,** 556 S.W.2d 1337 (Tex. Crim. App. 1977), and **Tamez v. State,** 534 S.W.2d 686 (Tex. Crim. App. 1976), cited by appellant. A probationer, like a parolee, has the right to enjoy a significant degree of privacy. **Basaldua v. State,** 558 S.W.2d 2, 7 (Tex. Crim. App. 1977). A probationer has a diminished expectation of privacy by virtue of the "conditions" but his rights may be diminished only to the extent necessary for his reformation and rehabilitation. **Owens v. Kelley,** 681 F. 2d 1362, 1367 (11th Cir. 1982). In **United States v. Consuelo-Gonzalez,** 521 F.2d 259 (9th Cir. 1975), the court held that probationary conditions which would allow any law enforcement officer to search a probationer at any time were overbroad and not reasonably related to the purpose of the act. The court further stated that the conditions which can be reasonably said to be proper are those that contribute significantly both to the rehabilita-

tion of the convicted person and to the protection of society. **See also United States v. Tonry,** 605 F.2d 144 (5th Cir. 1979).

In the case at bar, the condition in question sought the rehabilitation of appellant by supervising and restricting his involvement with the operation of illegal activity at 451 McCarty Road in San Antonio, Texas. According to the stipulated evidence, said location was used for the promotion and aggravated promotion of prostitution. Additionally, the condition acts to deter appellant from criminal activity, complying with the probationary purpose of protecting society. One probation violation will support the court's order to revoke probation. **Sanchez v. State,** 603 S.W.2d 869, 871 (Tex. Crim. App. 1980). lAppellant's fourth ground of error is overruled.

In reviewing the sufficiency of the evidence question, we are required to view the evidence in the light most favorable to the court's judgment revoking probation. **Garrett v. State,** 619 S.W.2d 172, 174, (Tex. Crim. App. 1981). The State satisfies its burden of proof when the greater weight of the credible evidence, i.e., the preponderance of the evidence, creates a reasonable belief that the probationer has violated a condition of his probation. **Taylor v. State,** 604 S.W.2d 175, 179 (Tex. Crim. App. 1980). In probation revocation proceedings, the trial court is the sole trier of the facts, the credibility of the witnesses,

and the weight to be given to the testimony. **Story v. State,** 614 S.W.2d 162, 164 (Tex. Crim. App. 1981); **Battle v. State,** 571 S.W.2d 20, 21 (Tex. Crim. App.1978). Appellate review of a revocation of probation proceeding is limited to a determination of whether the trial court abused its discretion. **McDonald v. State, supra.** In this case, the State established by a preponderance of the evidence that appellant violated Condition No. 16, paragraph III, by maintaining, operating, supervising, managing, controlling, financing and occupying the Paris Modeling Studio for the purpose of prostitution and aggravated prostitution, at 451 McCarty Road, San Antonio, Texas. The State witness, Sarah Lou Brach, testified that she worked at the Paris Modeling Studio at 451 McCarty from July 13 or 14, 1983, to July 19, 1983, and that during her employment **appellant, who was physically present at the studio every day,** gave orders to women who worked at the studio, inspected the book, and, together with Stevie Parmeter, obtained a d/b/a permit and new bank account for continuing the operation. Brach further testified that she was arrested at the studio on July 19th and that **an attorney restained by appellant posted her bond. Appellant admitted his presence at the business after July 15th, but he denied any interest in the business** and claimed he was there solely to explain the payroll system to the new owner. He

further testified that he believed his attorney had obtained an extension of the deadline for his sale of the business. The trial judge, as the trier of fact, chose to believe the testimony of the State's witness. Ground of error five is overruled.

In his sixth ground of error, appellant complains that the trial court erred in not halting the revocation proceedings sua sponte and conducting a competency examination when appellant's counsel testified that he had some reservations about appellant's mental competence. It is well settled that a trial court is required to sua sponte hold a competency hearing only when sufficient facts or circumstances are brought to the court's attention that create a reasonable doubt as to the competence of the appellant. **See e.g., Hackbarth v. State,** 617 S.W.2d 944, 948 (Tex. Crim. App. 1981); **Morales v. State,** 587 S.W.2d 418, 421 (Tex. Crim. App. 1979); **Perryman v. State,** 507 S.W.2d 541, 543 (Tex. Crim. App. 1974). The test of legal competence is whether the accused has sufficient present ability to consult with his lawyer and a reasonable degree of rational understanding of the proceedings against him. **Morales,** 587 S.W.2d at 421; **Paul v. State,** 544 S.W.2d 668, 670 (Tex. Crim. App. 1976); TEX. CODE CRIM. PROC. ANN. art. 46.02 (1)(a) (Vernon-1979). Appellant's testimony during the hearing was clear

and lucid; he made intelligent responses to questions propounded to him. In fact, appellant's counsel readily conceded that appellant has a factual and rational understanding of the charges against him. Appellant's sixth ground of error is overruled.

Finally, appellant urges that the trial court erred in overruling his motion to quash because the State's motion to enter adjudication of guilt and revoke probation was not verified by the prosecutor. **Pollard v. State,** 353 S.W.2d 449 (Tex. Crim. App. 1962), the sole case which appellant offers as authority for this ground of error, does not require verification of a motion to revoke. Additionally, the Code of Criminal Procedure is devoid of any such requirement. Appellant's seventh ground of error is overruled.

The judgment of the trial court is affirmed.

PETE TIJERINA,

ASSOCIATE JUSTICE

APPENDIX M

LETTER FROM ATT. W.T. REECE JR.

COPIE OF PETITION FOR

HABEAS CORPUS

BILL OF SALE

Law Offices Of
William T. Reece Jr., J.D.
Attorney and Counselor At Law
State and Federal Courts

419 South Main, Suite 333
Business and Professional Building
San Antonio, Texas 78204

Area Code
512
225-7555

Mr. Richard Russell
16106 Northwest Military
San Antonio, Texas 78231

Dear Mr. Russell,

In connection with your retention of me to handle your criminal case, currently pending in the 175th District Court in Bexar County, Texas, I have had the occasion to review the injuction signed by Judge Chavaria, yourself, and your former attorney, Royal Griffin.

I am of the opinion that the injuction entered May 18, 1983 is void, and cannot pass constitutional muster. There are serious problems with lack of notice to parties that it unsuccessfully attempts to enjoin. Also, it appears to be impermissibly broad. Indeed, the whole notion of attempting to enjoin criminal conduct in advance, raises constitutional questions and issues of the highest magnitude.

However, I cannot and do **not** suggest that you disobey this injunction in any fashion. I am of the opinion, however, that an attempt by the State of Texas to subject you to contempt penalties for disobedience thereof, would fail because of the constitutional defects in the injunction.

I am therefore urging you to obey the injunction in all respects. You have indicated to me your desire to sell Paris Modeling to Bea Heron. I am of the opinion, after carefully researching the issue, and consulting with other lawyers, that the proposed sale, in accordance with the terms of the sale executed on even date, do not conflict with **any** of the terms of the injunction.

Once again, I urge you to continue to obey the order of the Court, and show the Court all the respect which it is justly due.

Sincerely,

William T. Reece Jr.

WRTJR/S

William T. Reece Jr.
Attorney at Law

NO. _____

COURT OF APPEALS
FOR THE
4TH SUPREME JUDICIAL DISTRICT OF TEXAS
AT SAN ANTONIO, TEXAS

EX PARTE:

RICHARD RUSSELL, Relator

PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE COURT OF APPEALS:

RICHARD RUSSELL, Relator, petitions for a Writ of Habeas Corpus, and as grounds therefore, would respectfully show unto the Court as follows:

I.

Realtor is within the jurisdiction of this Court, and this Court has jurisdiction over this matter pursuant to the Revised Civil Statutes of Texas. The following persons would be directly affected by this proceeding: The State of Texas, who may be served with notice by and through her attorney of record, MICHAEL BLACK, Aasistant Criminal District Attorney, Bexar County Courthouse, San Antonio, Texas.

II.

Relator is illegally confined and restrained of his liberty at Bexar

County, Texas by JOE NEAVES, Sheriff of said County. Attached hereto is a copy of the Order of Commitment which is marked Exhibit "A" and attached hereto and incorporated herein by reference as if set forth at length.

III.

Relator's confinement and restraint is by virtue of the above referenced commitment issued by order of the 166th District Court of Bexar County, Texas, rendered on the 24th day of June, 1983, whereby relator was adjudged and held for contempt of such Court in cause number 81-CI-16876 and styled as follows:

> THE STATE OF TEXAS v. THE PUBLIC NUISANCE AT 451 McCARTY, PARIS MODELING STUDIO, RICHARD RUSSELL, ET AL, IN THE DISTRICT COURT, 166TH JUDICIAL DISTRICT, BEXAR COUNTY, TEXAS.

The contempt arose out of the relator's alleged violation of a provision in an order and judgement of permanent injunction granted on or about May 18, 1983, a certified copy of the injunction is attached and marked Exhibit "B" to which reference is made for all purpose.

IV.

Relator would further show that his confinement and restraint is illegal for the following reasons:

a. The hearing held June 24, 1983, failed to produce any evidence whatsoever that your Relator violated any of the terms and conditions in the Order and Judgment of Permanent Injunction. The evidence produced by the State failed to demonstrate any nexus whatsoever between your Relator, the said RICHARD RUSSELL, and the acts complained of in plaintiff's original motion for contempt and subsequent supplemental motion.

b. Relator's restraint denies him due process of law in that he has been ordered confined to the Bexar County, Texas Jail under the terms of the Order and Judgment of Permanent Injunction dated May 18, 1983, which failed to spell out in clear specific, and unambiguous terms the acts of which your Relator is enjoined from engaging in.

c. The order and judgment of permanent injunction dated May 18, 1983, is void for the following reasons:

1. Condition number 2 attempts to enjoin the said Richard Russell, your Relator, from "allowing" the premises of 451 McCarty from being used for promoting or compelling prostitution. Your Relator has divested himself of any interest he has in the said establishment yet the State of Texas is seeking to hold him (Richard Russell) responsible for the acts of others. Your Relator is not and cannot be responsible and be punished for contempt, as a result of actions by others not under his control or direction.

2. Condition number 4 in the injunction once again attempts to enjoin Defendant from allowing the premises at 451 McCarty or any other premises within the geographical confines of Bexar County, Texas, from being used for any commercial enterprises involving massage. Said term is void for the reason that it excludes legitimate uses of this said location and furthermore seeks to make Defendant responsible, through the sanction of contempt, for the acts of others.

3. Condition number 5 of the Order and Judgment of Permanent Injunction seeks to enjoin the Defendant from violating any provision, article or section of TEX. REV. CIV. STAT. ANN. arts. 2372 v & 2372w (Vernon Supp. 1982-1983) of the Regulations of Bexar County, Texas, for Massage Parlors in effect at any time; of the Regulations of Bexar County, Texas, for the Location of Certain Sexually Oriented Commercial Enterprises in effect at any time; of the

Code of the City of San Antonio regarding massage businesses, masseurs and sexually oriented commercial enterprises, in effect at any time; and of TEX. PENAL CODE ANN. § 43.01 - 43.05 (Vernon 1974 & Vernon Supp. 1982-1983), or any other state penal law regarding prostitution in effect at any time on premises at 451 McCarty Road, San Antonio, Texas, or premises at any other location within the geographical limits of Bexar County, Texas, in any place or manner. Condition number 5 is void because it does not include as attachments the various statutes and ordinances which are recited in the order and judgment of permanent injuction.

d. The Order and Judgment of Permanent Injunction was not issued in conformity with Article 4647 of the Vernon's Civil Statutes of the State of Texas which requires that the petition requesting the injunction be verified by affidavit and contain plain intelligible statements of the grounds for such relief.

e. Despite objection by the defense that the motion for contempt and the two supplement motions for contempt were not verified by affidavit as required in Article 4661 of the Vernon's Civil Statues of the State of Texas the Court proceeded to hear evidence in the matters alleged in the aforesaid motions for contempt.

f. The Court allowed evidence to be considered and heard on matters not contained in the pleadings, overvehement objections repeated throughout the course of the trial by defense counsel. This is not consistent with due process that should have been accorded Defendant, to-wit requisite notice.

g. The Judgment of Contempt and Order of Commitment prepared by the District Attorney and signed by the Honorable Phil Chavarria, Judge of the 175th District Court where not in conformity with the Judge's oral findings of fact contained in the record.

h. One of the alleged incidents of illegal sexual conduct was described by a police officer who "questioned a customer." The name and address of the said customer was not furnished to the defense yet heresay testimony of statements by the said customer describing elicit sexual activities was allowed by the Court over objection by the

defense. While the Court later agreed not to consider the said testimony later in the judgment rendered orally in Court the Court appeared to take this heresay testimony into consideration.

i. All of the conditions that are contained in the Order and Judgment of Permanent Injunction are void for the reason that they deny Relator due process of law and that it fails to proscribe in clear, specific and unambiguous terms the action the Relator is to take or not take in effectuating the order of the Court.

j. The judgment and commitment of the Court directing that the said RICHARD RUSSELL be incarcerated for three days is void for two reasons.

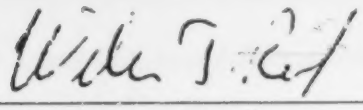
1. The pleadings of the plaintiff to-wit the State of Texas requests only that Defendant be fined or "jailed until he purges himself of this contempt." Defendant has purged himself of this contempt long before the hearing by selling his interests in this establishment. However, the Court stated that it did not want to hear evidence on this matter, to-wit the sale.

2. Article 4661 of Vernon's Civil Statutes of the State of Texas provide that the Judge may commit to jail a party found in contempt until he purges himself of such contempt. Here the Judge assessed incarceration at a term of three days, a punishment not contemplated by the statutes.

WHEREFORE, PREMISES CONSIDERED, Relator requests that this Honorable Court, or one of its Justices, upon examination of this application, issue a Writ of Habeas Corpus, and fix a time and place of appearance thereon; to release Relator pending further orders of this Court; and further Relator requests that he be brought without delay before this Court and that he be discharged from such illegal

confinement and restraint to the end of that justice prevails.

Respectfully submitted,



WILLIAM T. REECE, JR.
419 South Main, Suite 333
San Antonio, Texas 78204
(512) 225-7555
State Bar No. 16673000

BILL OF SALE

I, Bea (Beverly) Heron, propietor and owner of Paris Modeling, located at 451 McCarty, San Antonio, Texas, do hereby sell and forever divest my interest in this establishment, to Laura Kamp in exchange for ten dollars, and other valuable consideration.

This sale is of all my interest purchased from Richard Russell on June 3, 1983, and this is subject to all the conditions enumerated and agreed to in the said June 3rd Bill of Sale from Richard Russell. The said June 3, 1983 Bill of Sale is attached as "Attachment A", and the same is herein incorporated as though it were part and parcel of this Bill of Sale.

IT IS FURTHER AGREED that Laura Kamp shall in accordance with all the terms of the June 3, 1983 Bill of Sale will not cause Richard Russell, or allow the said Richard Russell to violate the injunction signed by the 175TH District Court, of Bexar County, Texas on May 18, 1983.

Beverl Heron — Laura Kamp

Bea (Beverly) Heron — Laura Kamp

SALE APPROVED AS PER BILL OF SALE OF JUNE 3, 1983 BY:

Richard Russell

STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this day personally appeared Richard Russell, Bea (Beverly) Heron, and Laura Kamp and acknowledged that the Bill of Sale is in accord with their wishes and understanding, and that they intend to be bound thereby. Executed this the 13th day of June 1983.

Notary Public
State of Texas

APPENDIX N

LETTER FROM DISTRICT CLERK

David J. Garcia

DISTRICT CLERK — BEXAR COUNTY

BEXAR COUNTY COURT HOUSE
SAN ANTONIO, TEXAS 78205

No. 81-CI-16876

THE STATE OF TEXAS	IN THE DISTRICT
VS.	COURT
PARIS MODELING STUDIO,	166TH JUDICIAL
ET AL	BEXAR COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF BEXAR

I, WILLIE MAE JACKSON, Deputy District Clerk for DAVID J. GARCIA, DISTRICT CLERK of BEXAR COUNTY, TEXAS, do hereby certify that after diligent search of our records in the above entitled numbered cause we find that this case was filed in the 166th Judicial District Court, also we find no Order to Transfer to the 175th Judicial District Court of Bexar County, Texas.

WITNESS, DAVID J. GARCIA, Clerk of the District Courts of Bexar County, Texas. Given under my hand and seal of said Courts this 26th day of June A.D. 1986.

DAVID J. GARCIA, DISTRICT CLERK
BEXAR COUNTY, TEXAS

By Willie Mae Jackson DEputy
Willie Mae Jackson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing petition has been forwarded to the Attorney General Jim Mattox.

Done this the 8-18, 1986

Richard Russell

Richard Russell